

105TH CONGRESS
1ST SESSION

H. R. 2762

To amend the Federal Water Pollution Control Act to improve the protection of the Nation's wetlands and watersheds, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 29, 1997

Mr. GILCHREST introduced the following bill; which was referred to the Committee on Transportation and Infrastructure

A BILL

To amend the Federal Water Pollution Control Act to improve the protection of the Nation's wetlands and watersheds, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; REFERENCES; DEFINITIONS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Wetlands and Watershed Management Act of 1997”.

6 (b) REFERENCES.—Except as otherwise expressly
7 provided, whenever in this Act an amendment or repeal
8 is expressed in terms of an amendment to, or repeal of,
9 a section or other provision, the reference shall be consid-

1 ered to be made to a section or other provision of the Fed-
2 eral Water Pollution Control Act (33 U.S.C. 1251 et seq.).

3 (c) DEFINITIONS.—In this Act, the following defini-
4 tions apply:

5 (1) ADMINISTRATOR.—The term “Adminis-
6 trator” means the Administrator of the Environ-
7 mental Protection Agency.

8 (2) SECRETARY.—The term “Secretary” means
9 the Secretary of the Army, acting through the Chief
10 of Engineers.

11 **SEC. 2. FINDINGS AND PURPOSES.**

12 (a) FINDINGS.—Congress makes the following find-
13 ings:

14 (1) Wetlands perform a number of valuable
15 functions needed to restore and maintain the chemi-
16 cal, physical, and biological integrity of the Nation’s
17 waters, including—

18 (A) reducing pollutants (including nutri-
19 ents, sediment, and toxics) from nonpoint and
20 point sources;

21 (B) storing, conveying, and purifying flood
22 and storm waters;

23 (C) reducing both bank erosion and wave
24 and storm damage to adjacent lands and trap-
25 ping sediment from upland sources;

(D) providing habitat and food sources for a broad range of commercial and recreational fish, shellfish, and migratory wildlife species (including waterfowl and threatened and endangered species); and

(E) providing a broad range of recreational values for canoeing, boating, birding, nature study and observation, and hunting and fishing, as appropriate.

(2) Original wetlands in the contiguous United States have been reduced by an estimated 50 percent and continue to disappear at a rate of 100,000 to 150,000 acres a year. Many of these original wetlands have also been altered or partially degraded, reducing their ecological value.

(3) Wetlands are highly sensitive to changes in water regimes and are, therefore, susceptible to degradation by fills, drainage, excavation, water extractions, and other activities within their watersheds which affect the quantity, quality, and flow of surface and ground waters. Protection and management of wetlands, therefore, should be integrated with management of water systems on a watershed basis. A watershed protection and management perspective is also needed to understand and reverse the grad-

1 ual, continued destruction of wetlands that occurs
2 due to cumulative impacts.

3 (4) Wetlands constitute an estimated 5 percent
4 of the Nation's surface area. Because much of this
5 land is in private ownership, wetlands protection and
6 management strategies must take into consideration
7 private property rights and the need for economic
8 development and growth. This can be best accom-
9 plished in the context of a cooperative and coordi-
10 nated Federal, State, and local strategy for data
11 gathering, planning, management, and restoration
12 with an emphasis on advance planning of wetlands
13 in watershed contexts.

14 (b) PURPOSES.—The purposes of this Act are—

15 (1) to help create a coordinated national wet-
16 land management effort with efficient use of scarce
17 Federal, State, and local financial and manpower re-
18 sources to protect wetland functions and values and
19 reduce natural hazard losses;

20 (2) to help reverse the trend of wetland loss in
21 a fair, efficient, and cost-effective manner;

22 (3) to reduce inconsistencies and duplication in
23 Federal, State, and local wetland management ef-
24 forts and encourage integrated permitting at the
25 Federal, State, and local levels;

1 (4) to increase technical assistance, cooperative
2 training, and educational opportunities for States,
3 local governments, and private landowners;

4 (5) to help integrate wetland protection and
5 management with other water resource management
6 programs on a watershed basis such as flood control,
7 storm water management, allocation of water supply,
8 protection of fish and wildlife, and point and
9 nonpoint source pollution control;

10 (6) to increase regionalization of wetland delin-
11 eation and management policies within a framework
12 of national policies through advance planning of wet-
13 land areas, general permits, and other approaches
14 and the tailoring of policies to ecosystem and land
15 use needs to reflect significant watershed variance in
16 wetland resources;

17 (7) to address the cumulative loss of wetland
18 resources;

19 (8) to increase the predictability of planning
20 and regulatory policies for private landowners;

21 (9) to help achieve no net loss in the remaining
22 wetland base of the United States (and in the long-
23 term a net gain in such wetland base) through wa-
24 tershed-based restoration strategies involving all lev-
25 els of government;

1 (10) to restore and create wetlands in order to
2 increase the quality and quantity of the wetland re-
3 sources and by so doing to restore and maintain the
4 quality and quantity of the waters of the United
5 States; and

6 (11) to provide mechanisms for State, Federal,
7 and local coordination to better protect wetland re-
8 sources.

9 **SEC. 3. DEFINITIONS.**

10 (a) NAVIGABLE WATERS.—Section 502(7) (33
11 U.S.C. 1362(7)) is amended by inserting “and wetlands”
12 before the period.

13 (b) PRIOR CONVERTED CROPLAND.—Section 502(7)
14 (33 U.S.C. 1362(7)) is further amended by adding at the
15 end the following: “Areas certified by the Secretary of Ag-
16 riculture, in consultation with the Administrator, as prior
17 converted cropland are not navigable waters unless crop-
18 ping has ceased and the area meets the definition of wet-
19 land.”.

20 (c) WETLANDS.—Section 502 (33 U.S.C. 1362) is
21 amended by adding at the end the following:

22 “(21) The term ‘wetlands’ means areas that are unin-
23 dated or saturated by surface water or ground water at
24 a frequency and duration sufficient to support, and that
25 under normal circumstances do support, a prevalence of

1 vegetation typically adapted to life in saturated soil condi-
2 tions.”.

3 (d) OTHER ALTERATION.—Section 502 (33 U.S.C.
4 1362) is further amended by adding at the end the follow-
5 ing:

6 “(22) The term ‘other alteration’ means any activity
7 affecting navigable waters which changes the flow, reach,
8 circulation, hydrologic regime, bottom contour, or configu-
9 ration of such waters or which changes the type, distribu-
10 tion, or diversity of vegetation, fish, or wildlife that are
11 present in such waters. The term includes draining, dredg-
12 ing, excavation, channelization, flooding, clearing of vege-
13 tation, driving of pilings or placement of other obstruc-
14 tions, and diversion or withdrawal of water.”.

15 **SEC. 4. DELINEATION.**

16 Section 404 (33 U.S.C. 1344) is amended by adding
17 at the end the following:

18 “(u) WETLANDS DELINEATIONS MANUAL.—

19 “(1) USE OF WETLANDS DELINEATIONS MAN-
20 UAL.—The Secretary, the Administrator, and the
21 Secretaries of the Interior, Commerce, and Agri-
22 culture shall use the Corps of Engineers Wetlands
23 Delineation Manual (1987) in carrying out this sec-
24 tion unless a new manual has been prepared and
25 formally adopted by the Secretary and the Adminis-

1 trator with input from the Secretaries of the Inte-
2 rior, Commerce, and Agriculture and the heads of
3 other relevant departments and agencies and after
4 field testing, hearings, and public comment.

5 “(2) CONTENTS OF NEW MANUAL.—Any new
6 manual adopted pursuant to this section shall spe-
7 cifically consider the recommendations of the 1995
8 report of the National Academy of Sciences concern-
9 ing the characteristics and boundaries of wetlands.

10 “(3) TRAINING ON USE OF MANUAL.—The Sec-
11 retary shall develop materials and conduct training
12 courses for consultants, State and local govern-
13 ments, and landowners explaining the use of the
14 Corps of Engineers Wetlands Delineation Manual
15 (1987), including any subsequent revisions, in the
16 delineation of wetland areas.

17 “(4) DEVELOPMENT OF SUPPLEMENTAL TECH-
18 NICAL CRITERIA AND PROCEDURES.—The Secretary
19 and the Administrator, in cooperation with the
20 States and the Secretaries of the Interior and Agri-
21 culture, may develop supplemental technical criteria
22 and procedures pertaining to wetland hydrology,
23 soils, and vegetation for identification of regional
24 wetland types.”.

1 **SEC. 5. EXPANSION OF SCOPE OF PERMIT PROGRAM.**

2 (a) PROHIBITION OF ACTIVITIES.—Section 301(a)
3 (33 U.S.C. 1311(a)) is amended by inserting after “the
4 discharge of any pollutant” the following: “or other alter-
5 ation of navigable waters”.

6 (b) CERTIFICATION.—The first sentence of section
7 401(a)(1) (33 U.S.C. 1341(a)(1)) is amended to read as
8 follows: “Any applicant for a Federal license or permit to
9 conduct any activity including, but not limited to, the con-
10 struction or operation of facilities, which may result in any
11 discharge into, or other alteration of, navigable waters
12 shall provide the licensing or permitting agency a certifi-
13 cation from the State where the discharge or other alter-
14 ation originates or will originate (or, if appropriate, from
15 the interstate water pollution control agency having juris-
16 diction over the navigable waters where the discharge or
17 other alteration originates or will originate) that the dis-
18 charge or other alteration will comply with the applicable
19 provisions of sections 301, 302, 303, 306, and 307 of this
20 Act and will allow for the protection, achievement, and
21 maintenance of designated uses included in applicable
22 water quality standards.”.

23 (c) ISSUANCE OF PERMITS.—Section 404(d) (33
24 U.S.C. 1344(d)) is amended to read as follows:

25 “(d) DEFINITIONS.—In this section, the following
26 definitions apply:

1 “(1) DISCHARGE OF DREDGED MATERIAL.—

2 The term ‘discharge of dredged material’ means any
3 addition of dredged material into navigable waters
4 and includes, without limitation, any addition (in-
5 cluding redeposit) of dredged material (including ex-
6 cavated material) into such waters which is inciden-
7 tal to any activity (including mechanized
8 landclearing, ditching, channelization, or other exca-
9 vation) that has or would have the effect of destroy-
10 ing or degrading any area of such waters, including
11 wetlands.”.

12 “(2) SECRETARY.—The term ‘Secretary’ means
13 the Secretary of the Army, acting through the Chief
14 of Engineers.”.

15 **SEC. 6. PERMITS FOR DISCHARGE OF DREDGED OR FILL**
16 **MATERIAL.**

17 (a) PERMIT MONITORING AND TRACKING.—Section
18 404 (33 U.S.C. 1344), as amended by section 4 of this
19 Act, is further amended by adding at the end the follow-
20 ing:

21 “(v) PERMIT MONITORING AND TRACKING PRO-
22 GRAM.—

23 “(1) ESTABLISHMENT.—The Secretary and the
24 Administrator shall establish and implement a per-
25 mit monitoring and tracking program on a water-

1 shed basis to monitor the cumulative impact of indi-
2 vidual and general permits issued under this section.

3 “(2) PURPOSE.—The purpose of the program
4 shall be to determine the impact of permitted activi-
5 ties under this section on the functions of directly
6 and indirectly impacted wetlands and other waters
7 (including protection of water quality, flood storage,
8 and fish and wildlife habitat) and to determine
9 whether such activities are consistent with the na-
10 tional goal of achieving no net loss of the functions
11 and acres of wetlands.

12 “(3) REPORTS.—Not later than 2 years after
13 the date of the enactment of this subsection, and bi-
14 ennially thereafter, the Secretary and the Adminis-
15 trator shall transmit to Congress a report on the re-
16 sults of the program established under this sub-
17 section.

18 “(4) AUTHORIZATION OF APPROPRIATIONS.—
19 There is authorized to be appropriated to carry out
20 this subsection \$1,000,000 for each of fiscal years
21 1999 and 2000.”.

22 (b) REVOCATION OR MODIFICATION OF GENERAL
23 PERMITS.—Section 404(e)(2) (33 U.S.C. 1344(e)(2)) is
24 amended—

1 (1) by striking “may be revoked” and inserting
2 “shall be revoked”;

3 (2) by striking “environment or” and inserting
4 “environment,”; and

5 (3) by striking the period at the end and insert-
6 ing “, or a State or regional entity has failed to ade-
7 quately monitor or control the individual and cumu-
8 lative adverse effects of activities authorized by
9 State programmatic general permits.”.

10 (c) PROGRAMMATIC GENERAL PERMITS.—Section
11 404(e) is amended by adding at the end the following:

12 “(3) PROGRAMMATIC GENERAL PERMITS.—

13 “(A) IN GENERAL.—Subject to subpara-
14 graph (B), the Secretary, after providing notice
15 and an opportunity for public comment, may
16 issue programmatic general permits on a State-
17 wide basis for the purpose of avoiding unneces-
18 sary duplication of regulations by Federal,
19 State, and regional regulatory programs. A pro-
20 grammatic general permit issued under this
21 paragraph must comply with the requirements
22 of paragraph (2).

23 “(B) REQUIREMENTS.—

24 “(i) IN GENERAL.—The Secretary
25 may issue a programmatic general permit

1 based on a State regulatory program if the
2 general permit includes adequate safe-
3 guards to ensure that the State program
4 will have no more than minimal individual
5 and cumulative impacts on the environ-
6 ment and will provide at least the same de-
7 gree of protection for the environment, in-
8 cluding all navigable waters, and for Fed-
9 eral interests, as is provided by this section
10 and by the Federal permitting program
11 pursuant to subsection (a).

12 “(ii) SAFEGUARDS.—Safeguards
13 under clause (i) shall include provisions
14 whereby the Secretary and the Adminis-
15 trator, in coordination with the Secretaries
16 of the Interior and Commerce, as appro-
17 priate, shall have an opportunity to—

18 “(I) review a permit application
19 submitted to the State regulatory
20 agency which, if approved, could re-
21 sult in more than minimal individual
22 or cumulative adverse impacts on the
23 environment;

1 “(II) attempt to resolve any re-
2 lated environmental concern and pro-
3 tect Federal interests at issue; and

4 “(III) if such concern is not ade-
5 quately addressed by the State agen-
6 cy, require the processing of an indi-
7 vidual Federal permit under this sec-
8 tion for the specific proposed activity.

9 “(iii) PROTECTION OF FEDERAL IN-
10 TERESTS.—In carrying out this subpara-
11 graph, the Secretary and the Adminis-
12 trator, in coordination with the Secretaries
13 of the Interior and Commerce, as appro-
14 priate, shall protect all Federal interests,
15 including national security, navigation,
16 flood control, Federal endangered or
17 threatened species, Federal interests under
18 the Wild and Scenic Rivers Act, special
19 aquatic sites of national importance, and
20 other interests of overriding national im-
21 portance.

22 “(C) CONSISTENCY WITH GUIDELINES.—A
23 programmatic general permit shall not be is-
24 sued under this paragraph unless the State reg-
25 ulatory program is no less protective than and

1 contains comparable procedural opportunities to
2 those provided under guidelines promulgated to
3 implement subsection (b)(1).”.

4 (d) GRANDFATHER OF EXISTING GENERAL PER-
5 MITS.—Section 404(e) is further amended by adding at
6 the end the following:

7 “(4) GRANDFATHER OF EXISTING GENERAL
8 PERMITS.—General permits in effect on the day be-
9 fore the date of the enactment of this paragraph
10 shall remain in effect according to the terms of the
11 permit until the expiration date contained in the
12 permit unless otherwise modified or revoked by the
13 Secretary or held invalid by a court.”.

14 (e) ACTIVITIES NOT REQUIRING A PERMIT.—Section
15 404(f) (33 U.S.C. 1344(f)) is amended by striking the
16 subsection designation and all that follows through para-
17 graph (1) and inserting the following:

18 “(f) ACTIVITIES NOT REQUIRING A PERMIT.—

19 “(1) IN GENERAL.—Except as provided in para-
20 graph (2), activities are exempt from the require-
21 ments of this section and are not prohibited by or
22 otherwise subject to regulation under this section or
23 section 301 or 402 of this Act (except effluent
24 standards or prohibitions under section 307 of this
25 Act) if such activities—

1 “(A) result from normal farming,
2 silviculture, and ranching activities and prac-
3 tices, such as plowing, seeding, cultivating,
4 haymaking, grazing, minor drainage in connection
5 with such activities, harvesting for the produc-
6 tion of food, fiber, and forest products, or up-
7 land soil and water conservation practices;

8 “(B) are for the purpose of routine or
9 emergency maintenance of currently serviceable
10 structures such as dikes, dams, levees, groins,
11 riprap, breakwaters, causeways, bridge abut-
12 ments or approaches, and transportation struc-
13 tures;

14 “(C) are for the purpose of construction or
15 maintenance of farm or stock ponds or irriga-
16 tion ditches or the maintenance of drainage
17 ditches and tile lines (including resloping of
18 drainage ditches for the exclusive purpose of
19 controlling bank erosion);

20 “(D) are for the purpose of construction of
21 temporary sedimentation basins on a construc-
22 tion site which does not include placement of
23 fill material into the navigable waters;

24 “(E) are for the purpose of construction or
25 maintenance of farm roads, forest roads, or

temporary roads for moving mining equipment in accordance with best management practices to assure that flow and circulation patterns and chemical and biological characteristics of the navigable waters are not impaired, that the reach of the waters is not reduced, and that any adverse effect on the aquatic environment will be otherwise minimized; or

“(F) are agricultural activities performed on farmed wetlands, such as haying, grazing, harrowing, discing, maintenance of irrigation water retention basins, or maintenance of existing drainage tile systems.

SEC. 7. COMPENSATORY MITIGATION.

Section 404 (33 U.S.C. 1344), as amended by section 6 of this Act, is further amended by adding at the end the following:

“(w) GENERAL REQUIREMENTS.—

“(1) MITIGATION SEQUENCE REQUIREMENTS.—

Any application for a permit submitted under this section shall be reviewed to ensure that mitigation measures are taken in the following order:

“(A) Measures to avoid any adverse effects on wetlands caused by the proposed activities.

1 “(B) Measures to minimize any adverse ef-
2 fects that cannot be avoided.

3 “(C) Measures to compensate for adverse
4 impacts on wetland functions, values, and acre-
5 age.

6 “(2) STANDARDS.—The Secretary, in consulta-
7 tion with the Administrator, shall ensure that com-
8 pensatory mitigation by a permittee—

9 “(A) is a specific, enforceable condition of
10 the permit for which it is required;

11 “(B) will meet defined success criteria; and

12 “(C) is monitored to ensure compliance
13 with the conditions of the permit and to deter-
14 mine the effectiveness of the mitigation in com-
15 pensating for the adverse effects for which the
16 mitigation is required.

17 “(3) COMPENSATORY MITIGATION DEFINED.—

18 In this subsection, the term ‘compensatory mitiga-
19 tion’ means the restoration, creation, enhancement,
20 and, in exceptional circumstances, preservation of
21 wetlands or other aquatic resources and associated
22 upland habitat for the purpose of compensating for
23 unavoidable adverse impacts which remain after all
24 appropriate and practicable steps have been taken to
25 avoid and minimize such impacts. In carrying out

1 this subsection, preference shall be given to in-kind
2 restoration on the same waterbody and within the
3 same local watershed where practicable and environ-
4 mentally preferable.

5 “(4) REGULATIONS.—Not later than 90 days
6 after the date of the enactment of this subsection,
7 the Secretary, after providing notice and opportunity
8 for comment, shall issue proposed rules defining the
9 exceptional circumstances in which preservation of
10 wetlands is permissible as a mitigation option for a
11 permittee under this section. The definition of excep-
12 tional circumstances shall be limited to cir-
13 cumstances in which the parcel to be preserved is
14 facing a discrete, identifiable threat to its continued
15 existence as a wetland.

16 **SEC. 8. ESTABLISHMENT AND USE OF MITIGATION BANKS.**

17 Section 404 (33 U.S.C. 1344), as amended by section
18 7 of this Act, is further amended by adding at the end
19 the following:

20 “(x) ESTABLISHMENT AND USE OF MITIGATION
21 BANKS.—

22 “(1) IN GENERAL.—Not later than 1 year after
23 the date of the enactment of this subsection, and
24 after providing notice and an opportunity for public
25 review and comment, the Secretary and the Admin-

1 istrator shall issue regulations for the establishment,
2 use, maintenance, and oversight of mitigation banks.
3 The regulations shall be developed in consultation
4 with the Secretary of the Interior (acting through
5 the Director of the United States Fish and Wildlife
6 Service) and the Secretary of Commerce (acting
7 through the Administrator of the National Oceanic
8 and Atmospheric Administration).

9 “(2) REQUIREMENTS FOR BANK ESTABLISH-
10 MENT.—

11 “(A) SUBMISSION OF PLANS.—In order to
12 be eligible to operate a mitigation bank, an ap-
13 plicant shall submit to the Secretary and the
14 Administrator for approval detailed plans for
15 establishment of the bank, including bank
16 goals, bank size, type of wetlands to be re-
17 stored, created, or enhanced, methods for deter-
18 mining debits and credits, performance stand-
19 ards for determining bank success, ownership of
20 bank lands, description of baseline conditions
21 and geographical extent of bank lands, financial
22 assurances, contingency and remedial actions
23 and responsibilities in case of bank failure, re-
24 porting protocols and provisions for long term
25 management, monitoring, and maintenance.

1 “(B) PUBLIC REVIEW AND COMMENT.—

2 The Secretary and the Administrator shall
3 make a plan submitted under subparagraph (A)
4 available for public review. The public shall
5 have a minimum of 30 days to review and com-
6 ment on the plan before the authorization of a
7 mitigation banking instrument.

8 “(C) AGENCY COORDINATION IN DEVELOP-

9 MENT OF BANKING INSTRUMENT.—In making a
10 decision to approve an application to establish
11 and operate a mitigation bank, the Secretary
12 and the Administrator shall consult with the
13 Secretaries of the Interior, Commerce, and Ag-
14 riculture, as appropriate. The Secretary and the
15 Administrator shall also coordinate with the ap-
16 propriate State, local, and tribal resource agen-
17 cies and the potential bank sponsors in develop-
18 ing a legally binding banking instrument.

19 “(D) APPROVAL OF MITIGATION BANKING

20 INSTRUMENT.—Upon approval of the proposed
21 mitigation bank plans required under subpara-
22 graph (A) by the Secretary and the Adminis-
23 trator, in consultation with the Secretaries of
24 the Interior, Commerce, and Agriculture, as ap-
25 propriate, such plans shall be recognized as the

1 legally binding mitigation banking instrument.
2 Approval of a banking instrument by the Sec-
3 retary and the Administrator shall be required
4 prior to bank development.

5 “(E) GRANDFATHERING OF EXISTING
6 MITIGATION BANKS.—Mitigation banks in oper-
7 ation on the day before the date of the enact-
8 ment of this subsection shall submit to the Sec-
9 retary and the Administrator, within 180 days
10 of such date of enactment, mitigation bank
11 plans in accordance with the requirements of
12 subparagraph (A), unless a similar plan or in-
13 strument was developed in accordance with
14 interagency guidance on wetlands mitigation
15 banking in consultation with the Secretary.

16 “(3) USE OF MITIGATION BANKS.—

17 “(A) WATERSHED MANAGEMENT.—Mitiga-
18 tion banks shall be planned and developed to
19 address specific resource needs of a particular
20 watershed and shall be planned in conjunction
21 with comprehensive watershed management
22 plans developed in accordance with section 321,
23 where applicable.

24 “(B) MITIGATION SEQUENCING.—In ac-
25 cordance with the requirements of this section,

1 all practical and appropriate steps shall be
2 taken to sequentially avoid and minimize im-
3 pacts to wetlands and other aquatic resources
4 prior to authorization to use a mitigation bank.

5 “(C) IN-KIND COMPENSATION RE-
6 QUIRED.—In the interest of achieving func-
7 tional replacement, in-kind compensation of
8 wetlands or aquatic resources shall be required,
9 except where out-of-kind mitigation is deter-
10 mined to be environmentally preferable.

11 “(D) GEOGRAPHIC TRANSPORT OF MITIGA-
12 TION BANK CREDITS.—In order for the pur-
13 chase of credits from a mitigation bank to fulfill
14 mitigation requirements associated with a per-
15 mit issued under this section, the mitigation
16 bank must be located in the same hydrologic
17 cataloguing unit (as established on maps pub-
18 lished by the U.S. Geological Survey) as the
19 project or impact site.

20 “(4) CREDIT WITHDRAWAL.—

21 “(A) TOTAL NUMBER OF CREDITS.—The
22 total number of credits to be contained in a sin-
23 gle mitigation bank shall be agreed upon and
24 outlined within the banking instrument and
25 may not be increased over the life of the bank.

1 “(B) DEBITING.—Where adequate finan-
2 cial assurances exist and bank success is highly
3 likely, and when all signatories to the banking
4 instrument agree, debiting of up to 20 percent
5 of the total number of projected credits within
6 the bank may be allowed to occur at one time
7 to provide initial capital for the restoration, cre-
8 ation, or enhancement project if—

9 “(i) appropriate measurements of suc-
10 cess are agreed upon by the signatories of
11 the bank instrument;

12 “(ii) no additional credits may be sold
13 prior to successful establishment of the ini-
14 tial credits; and

15 “(iii) signatories to the bank instru-
16 ment are allowed to conduct periodic on-
17 site inspections of bank performance.

18 “(5) MONITORING, MAINTENANCE, AND REME-
19 DIATION PROVISIONS.—The bank instrument shall
20 also include provisions for—

21 “(A) the types of monitoring, the fre-
22 quency and duration of monitoring, and re-
23 quirements for reporting on bank progress to
24 the instrument signatories;

1 “(B) any regular maintenance which may
2 be required to maintain hydrologic, soil, and
3 hydrophytic vegetation criteria; and

4 “(C) procedures for identifying and imple-
5 menting remedial measures at a bank in case of
6 bank failure.

7 “(6) FINANCIAL ASSURANCES.—

8 “(A) RESPONSIBILITIES OF BANK SPON-
9 SOR.—The bank sponsor shall be responsible
10 for meeting all funding requirements reflecting
11 realistic cost estimates for monitoring, mainte-
12 nance, contingency, and remedial actions
13 throughout the operational life of the bank. The
14 bank sponsor shall also be responsible for pro-
15 viding adequate funding for any long-term
16 maintenance beyond the operational life of the
17 bank which are identified in the banking instru-
18 ment.

19 “(B) FORM OF FINANCIAL ASSURANCES.—
20 Financial assurances may be in the form of per-
21 formance bonds, irrevocable trusts, escrow ac-
22 counts, casualty insurance, letters of credit, or
23 other sources approved within the bank instru-
24 ment.

1 “(C) PHASING OUT OF FINANCIAL ASSUR-
 2 ANCES.—Financial assurances may be phased
 3 out or reduced once bank maturity or self suffi-
 4 ciency has been established, as outlined in the
 5 bank instrument.

6 “(7) METHODS FOR DETERMINING DEBITS,
 7 CREDITS, AND FEE STRUCTURES.—

8 “(A) METHODS FOR DETERMINING DEBITS
 9 AND CREDITS.—Banking instruments shall in-
 10 clude consistent and scientifically sound meth-
 11 ods for determining debits and credits.

12 “(B) METHODS FOR DETERMINING
 13 FEES.—Each bank shall base fee charges for
 14 participation in a mitigation bank that reflect
 15 the full costs of replacing lost wetlands func-
 16 tions and acreage, including the costs of land
 17 acquisition, wetlands establishment, manage-
 18 ment measures, long-term maintenance, mon-
 19 itoring and protection, potential remediation of
 20 project failure, and other relevant factors.

21 “(8) DEFINITIONS.—In this subsection, the fol-
 22 lowing definitions apply:

23 “(A) COMPENSATORY MITIGATION.—The
 24 term ‘compensatory mitigation’ means the res-
 25 toration, creation, enhancement, and, in excep-

1 tional circumstances, preservation of wetlands
2 or other aquatic resources and associated up-
3 land habitat for the purpose of compensating
4 for unavoidable adverse impacts which remain
5 after all appropriate and practicable steps have
6 been taken to avoid and minimize such impacts.

7 “(B) CREDIT.—The term ‘credit’ means a
8 unit of measure representing the attainment of
9 function at a mitigation bank. The measure of
10 function is typically indexed to the number and
11 quality of acres restored, created, or enhanced.

12 “(C) DEBIT.—The term ‘debit’ means a
13 unit of measure representing the loss of wetland
14 or aquatic resource function at an impact or
15 project site.

16 “(D) MITIGATION BANK.—The term ‘miti-
17 gation bank’ means a site where wetlands or
18 other aquatic resources have been restored, cre-
19 ated, enhanced, or, in exceptional cir-
20 cumstances, preserved by 1 or more public or
21 private parties expressly for the purpose of pro-
22 viding compensatory mitigation credits to offset
23 authorized impacts to similar resources.

24 “(E) MITIGATION BANKING INSTRU-
25 MENT.—The term ‘mitigation banking instru-

ment’ means a legally binding agreement between a bank sponsor, the Secretary, the Administrator, and the heads of other appropriate Federal, State, tribal, and local resource agencies outlining the objectives and administration of the bank, including detailed physical and legal characteristics of the bank and how the bank will be established and operated.

“(F) MITIGATION SEQUENCING.—The term ‘mitigation sequencing’ means sequentially avoiding impacts, minimizing impacts, and compensating for unavoidable impacts made to navigable waters, including wetlands.”.

**SEC. 9. COMPREHENSIVE WATERSHED PLANNING AND
MANAGEMENT.**

(a) STATEMENT OF CONGRESSIONAL POLICY.—Section 101 (33 U.S.C. 1251) is amended by adding at the end the following:

“(h) WATER QUALITY.—It is the policy of Congress to encourage the development and implementation of comprehensive watershed management to maintain and enhance water quality, to protect and conserve wetland resources, and to further the purposes of this Act by—

“(1) increasing public participation in selecting measures to maintain and enhance water quality;

9 “(4) provide assistance to States that formulate
10 and implement comprehensive management plans to
11 improve water quality and protect natural re-
12 sources.”.

16 “SEC. 321. WETLANDS AND WATERSHED MANAGEMENT
17 PLANS.

•HR 2762 IH

1 management district, or other public entity that has ade-
2 quate powers and resources to carry out the responsibil-
3 ities authorized by this section in a comprehensive man-
4 ner.

5 “(b) APPROVAL.—Each designation of a wetlands
6 and watershed management unit and a corresponding
7 management entity under this subsection shall be submit-
8 ted to the Administrator and the Secretary of the Army,
9 acting through the Chief of Engineers (referred to in this
10 section as the ‘Secretary’), for approval. If the Adminis-
11 trator and the Secretary disapprove a designation, the Ad-
12 ministrator and the Secretary shall notify the manage-
13 ment entity in writing of the reasons for the disapproval.
14 A revised designation may be submitted to meet the objec-
15 tions of the Administrator and the Secretary.

16 “(c) PUBLIC PARTICIPATION.—Approved manage-
17 ment entities shall opportunities for public participation
18 in the development of wetlands and watershed manage-
19 ment plans under this section including procedures for
20 public notice and comment and establishment of scientific
21 and citizens advisory committees.

22 “(d) APPROVAL OF PLANS.—

23 “(1) SUBMISSION OF PLAN.—The Governor of a
24 State may submit to the Administrator for approval
25 by the Administrator and the Secretary a com-

1 prehensive wetlands and watershed management
2 plan developed pursuant to this section.

3 “(2) DECISION ON PLAN.—The Administrator
4 and the Secretary shall, in consultation with the
5 Secretaries of the Interior, Agriculture, and Com-
6 merce, and after providing notice and an opportunity
7 for public comment, approve or disapprove a com-
8 prehensive wetlands and watershed management
9 plan.

10 “(3) PLAN REQUIREMENTS.—A wetlands and
11 watershed management plan shall include—

12 “(A) the designation of an administering
13 agency which shall be responsible for making
14 reports to the Secretary and the Administrator
15 every 2 years on implementation of the plan
16 and on the losses and gains in functions and
17 acres of wetlands within the watershed plan
18 area;

19 “(B) inventory, mapping, and characteriza-
20 tion of—

21 “(i) the boundary of the plan area;
22 and

23 “(ii) all wetlands and waters of the
24 United States within the plan area as well
25 as other areas proposed for protection

1 under the plan, including characterization
2 of weather effects and other physical fac-
3 tors affecting the plan area;

4 “(C) proposed wetlands restoration sites
5 with a description of the intended functions of
6 the sites upon completion and the time required
7 for completion;

8 “(D) primary land uses within the bound-
9 aries of the plan;

10 “(E) presence of endangered species, cul-
11 tural and historic resources, wetlands and other
12 natural resource areas of special State, re-
13 gional, or national concern;

14 “(F) current infrastructure such as major
15 roads and bridges and sewage treatment facili-
16 ties;

17 “(G) a description of the regulatory poli-
18 cies and standards applicable to all wetlands
19 and waters within the plan areas and all activi-
20 ties which may affect these wetlands and waters
21 that will assure, at a minimum, no net loss of
22 the functions and acres of wetlands within the
23 plan area;

24 “(H) demonstration that the administering
25 agency has the legal authority, financial re-

1 sources, and scientific monitoring capability to
2 carry out the proposed plan;

3 “(I) provisions that the management entity
4 will report to the Administrator, the Secretary,
5 and the public not later than 2 years after the
6 date of implementation of the plan, and every
7 2 years thereafter, on the implementation of the
8 plan and on the losses and gains in functions
9 and acres of wetlands within the wetlands and
10 watershed management unit.

11 “(e) PLANNING, IMPLEMENTATION, AND MONITOR-
12 ING SCHEDULE.—Each wetlands and watershed manage-
13 ment plan submitted and approved under subsection (b)
14 shall include a planning, implementation, and monitoring
15 schedule for a period of at least 10 years. The implementa-
16 tion schedule shall include all appropriate milestones for
17 meeting the management objectives established under the
18 plan.

19 “(f) INCENTIVES FOR WETLANDS AND WATERSHED
20 MANAGEMENT PLANNING.—

21 “(1) GRANTS.—Subject to the requirements of
22 this section, the Administrator is authorized to make
23 grants to approved management entities which shall
24 be eligible to receive funding for the following activi-

1 ties in the development of a wetlands and watershed
2 management plan:

3 “(A) An inventory and mapping of—

4 “(i) all navigable waters within the
5 proposed wetlands and watershed manage-
6 ment unit; and

7 “(ii) potential wetlands restoration
8 sites.

9 “(B) An assessment of the functions and
10 relative value of wetlands within the wetlands
11 and watershed management unit.

12 “(C) The identification of potential mitiga-
13 tion banks.

14 “(D) The development and implementation
15 of measures to integrate wetlands planning and
16 management with broader water resource and
17 land use planning and management, including
18 floodplain management, water supply,
19 stormwater management, and the control of
20 point and nonpoint source pollution.

21 “(E) The development and implementation
22 of management strategies for preserving and re-
23 storing wetlands on a watershed basis.

24 “(F) The consideration of, and coordina-
25 tion with, water resource and land use planning

1 efforts in adjacent States within the region or
2 basin in which the wetlands and watershed
3 management unit is located.

4 “(2) AUTHORIZATION OF APPROPRIATIONS.—
5 There is authorized to be appropriated to carry out
6 this section \$10,000,000 for each of fiscal years
7 1999 through 2003.

8 “(3) EXPEDITED PERMIT REVIEW.—At the re-
9 quest of an approved management entity, a decision
10 under section 404(a) with respect to a completed ap-
11 plication for a permit for the discharge of dredged
12 or fill material into navigable waters within a des-
13 ignated wetlands and watershed unit shall be made
14 in accordance with expedited permit processing pro-
15 cedures if the application is in compliance with an
16 approved wetlands and watershed management plan.
17 Such procedures shall be established by the Sec-
18 retary and the Administrator after providing notice
19 and an opportunity for public comment.

20 “(4) TECHNICAL ASSISTANCE.—At the request
21 of an approved management entity, the Secretaries
22 of the Interior, Commerce, and Agriculture, shall, to
23 the extent practicable, provide the management en-
24 tity with technical assistance in carrying out wet-

1 lands and watershed management planning activities
2 under this section.

3 “(g) RESEARCH PROGRAM.—The Secretary, in co-
4 operation with the Administrator, the Secretaries of the
5 Interior and Commerce, and the heads of other appro-
6 priate Federal, State, and local government entities, shall
7 carry out a research program on wetlands and watershed
8 management. The research program shall include—

9 “(1) study of the functions, values, and man-
10 agement needs of altered, artificial, and managed
11 wetlands systems;

12 “(2) study and development of techniques and
13 methods for determining and analyzing the functions
14 and values of different types of wetlands;

15 “(3) study and development of techniques for
16 managing and restoring wetlands within a watershed
17 context;

18 “(4) study and development of techniques for
19 better coordinating and integrating wetlands protec-
20 tion, floodplain management, stormwater manage-
21 ment, point and nonpoint source pollution controls,
22 and water supply planning on a watershed basis;

23 “(5) development of criteria for identifying wet-
24 lands restoration sites on a watershed basis; and

1 “(6) recommendation of procedures and ecologi-
2 cal criteria for wetlands restoration.”.

3 **SEC. 10. GRANTS TO FACILITATE IMPLEMENTATION OF**
4 **SECTION 404.**

5 (a) IN GENERAL.—Subject to the requirements of
6 this section, the Administrator may make grants to States
7 for activities that implement section 404 of the Federal
8 Water Pollution Control Act through—

9 (1) State assumption of permitting pursuant to
10 subsections (g) and (h) of section 404 of such Act;

11 (2) permitting through a programmatic general
12 permit pursuant to section 404(e) of such Act; and

13 (3) other monitoring, management, protection,
14 and enforcement activities.

15 (b) ASSURANCES.—In order to be eligible to receive
16 a grant under this section, a State shall provide assur-
17 ances satisfactory to the Administrator that amounts re-
18 ceived by the State in grants under this section will be
19 used to carry out the activities listed in subsection (a) con-
20 sistent with the overall goals of section 404 of the Federal
21 Water Pollution Control Act and the standards and proce-
22 dures of subsections (g) and (h) of such section 404.

23 (c) MAXIMUM AMOUNT.—No State may receive more
24 than \$300,000 in grants under this section in any fiscal
25 year.

1 (d) FEDERAL SHARE.—The Federal share of the cost
2 of activities carried out using amounts made available in
3 grants under this section shall not exceed 75 percent.

4 (e) AUTHORIZATION OF APPROPRIATIONS.—There is
5 authorized to be appropriated to carry out this section
6 \$25,000,000 for each of fiscal years 1999 through 2003.

7 **SEC. 11. STATE, LOCAL, AND LANDOWNER TECHNICAL AS-**
8 **SISTANCE AND COOPERATIVE TRAINING.**

9 (a) STATE AND LOCAL TECHNICAL ASSISTANCE.—
10 Upon request, the Administrator or the Secretary, as ap-
11 propriate, shall provide technical assistance to State and
12 local governments in the development and implementation
13 of State permitting programs under subsections (e) and
14 (h) of section 404 of the Federal Water Pollution Control
15 Act and wetlands and watershed management plans under
16 section 321 of such Act.

17 (b) COOPERATIVE TRAINING.—The Administrator
18 and the Secretary shall conduct training courses for States
19 and local governments involving wetland delineation, utili-
20 zation of wetlands in nonpoint pollution control, wetland
21 and stream restoration, wetland planning, wetland evalua-
22 tion, mitigation banking, and other subjects deemed ap-
23 propriate by the Administrator or the Secretary.

24 (c) PRIVATE LANDOWNER TECHNICAL ASSIST-
25 ANCE.—The Administrator and the Secretary, in coopera-

tion with appropriate State and Federal agencies, shall develop and provide to private landowners guidebooks, pamphlets, or other materials and technical assistance to help the landowners in identifying and evaluating wetlands, developing integrated wetland management plans for their lands consistent with the goals of this Act and the Federal Water Pollution Control Act, and restoring wetlands.

SEC. 12. CITIZEN SUITS.

Section 505 (33 U.S.C. 1365) is amended by striking the section heading and all that follows through subsection (a) and inserting the following:

“SEC. 505. CITIZEN SUITS.

“(a) IN GENERAL.—Except as provided in subsection (b) of this section and section 309(g)(6), any citizen may commence a civil action on his own behalf—

“(1) against any person, including the United States and any other governmental instrumentality or agency to the extent permitted by the eleventh amendment to the Constitution, who is alleged to be in violation of—

“(A) an effluent standard or limitation under this Act;

“(B) the terms and conditions included in a general permit, a mitigation banking instrument, or other mitigation requirement; or

1 “(C) an order issued by the Secretary or
2 the Administrator (or both) or a State with re-
3 spect to such standard or limitation; and

4 “(2) against the Secretary or the Administrator
5 where there is alleged a failure of the Secretary or
6 the Administrator to perform any act or duty under
7 this Act which is not discretionary with the Sec-
8 retary or the Administrator.

9 The district courts shall have jurisdiction, without regard
10 to the amount in controversy or the citizenship of the par-
11 ties, to enforce such an effluent standard or limitation,
12 general permit term, mitigation requirement, or such an
13 order, or to order the Secretary or the Administrator to
14 perform such act or duty, as the case may be, and to apply
15 any appropriate civil penalties under section 309(d).”.

○